Supreme Court, U.S.
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No. 05- 05-573

IN THE

Supreme Court of the United States

MALINEE B. VIRACHACK and
RITNARONE T. VIRACHACK,

Petitioners,

v.

UNIVERSITY FORD D/B/A BOB BAKER FORD ("BOB BAKER FORD"), A CALIFORNIA CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The Truth in Lending Act's ("TILA") (15 U.S.C. § 1631[a]) undisputed statutory purpose is "the informed use of credit" through "meaningful disclosure of credit terms" to consumers. 15 U.S.C. § 1601; *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, 559 (1980). TILA is designed to aid the unsophisticated consumer so he or she will not be easily misled as to the total costs of their chosen financing, *Thomka v. A.Z. Chevrolet, Inc.*, 619 F.2d 246, 248 (3d Cir. 1980), and thereby "to balance scales thought to be weighed in favor of lenders." *Ramadan v. Chase Manhattan Corp.*, 229 F.3d 194, 197 (3d Cir. 2000) (citations omitted).

In a split published decision, the majority of a Ninth Circuit panel held a $2,000 auto manufacturer's rebate, unknowingly forfeited as a condition to financing offered by the car dealer, is not a "finance charge" that must be disclosed under TILA. This majority decision allows car dealers to conceal from consumers the true cost of financing their purchase; in other words, to hide that the cost of their credit includes forfeiting a rebate of $2,000. Because a car purchase is one of the most important but perilous purchases for all consumers and this majority decision conflicts with TILA and case law, a writ of certiorari should issue.

This case presents the following issue for certiorari:

> 1. Whether the Truth In Lending Act (15 U.S.C. §§ 1601, *et seq.*) ("TILA") requires a car dealership to disclose, as part of the mandatory disclosure of "finance charge," an available cash rebate a consumer must forfeit to accept the car dealership's financing offer.

PARTIES TO THE PROCEEDING

Petitioners are Malinee B. Virachack and Ritnarone T. Virachack ("the Virachacks"), individually and on behalf of all others similarly situated.

Respondent is University Ford dba Bob Baker Ford ("Bob Baker Ford"), a California corporation.

CORPORATE DISCLOSURE STATEMENT

Malinee B. Virachack and Ritnarone T. Virachack are individuals and issue no stock, have no parent corporation and no publicly held company has an ownership interest in them.

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CITATIONS OF OPINIONS AND ORDERS

The published opinion of the Court of Appeals for the Ninth Circuit is reported at *Virachack v. Univ. Ford*, 410 F.3d 579 (9th Cir. 2005) and is set forth in the appendix hereto. (Appa. 1a-15a.) The decision of the United States District Court for the Southern District of California is reported at *Virachack v. Univ. Ford*, 259 F. Supp. 2d 1089 (S.D. Cal. 2003) and is set forth in the appendix hereto. (App. 16a-28a.)

The Order of the Court of Appeals for the Ninth Circuit, denying petitioners' timely filed petition for rehearing and rehearing en banc in *Virachack v. Univ. Ford*, was filed July 6, 2005, and is set forth in the appendix hereto. (App. 29a-30a.)

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This petition for a writ of certiorari is timely filed. The decision of the Court of Appeals for the Ninth Circuit was filed on May 20, 2005. The Order denying the Virachacks' petition for rehearing and rehearing en banc was filed on July 6, 2005. On the Virachacks' application, this Court granted an extension of time to file this petition for a writ of certiorari up to and including November 3, 2005.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

15 U.S.C. section 1601:

> (a) Informed use of credit. The Congress finds that economic stabilization would be enhanced

> and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this title [15 U.S.C.S. §§ 1601, *et seq.*] to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

12 C.F.R. section 226.1:

> (a) Authority. This regulation, known as Regulation Z, is issued by the Board of Governors of the Federal Reserve System to implement the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. §§ 1601, *et seq.*). This regulation also implements title XII, section 1204 of the Competitive Equality Banking Act of 1987 (Pub. L. 100-86, 101 Stat. 552). Information-collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. §§ 3501, *et seq.* and have been assigned OMB number 7100-0199.
>
> (b) Purpose. The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost.